

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of:)	
)	
ReconRobotics, Inc.,)	
)	WP Docket No. 08-63
Request for Waiver of Part 90 of the)	
Commission's Rules for a Video and Audio)	
<u>Surveillance System at 430-450 MHz.</u>)	

To the Commission:

MOTION FOR SUMMARY DECISION

COMES NOW movant, JAMES EDWIN WHEDBEE, and pursuant to Sections 551(4), 551(5), 553 of Title 5 of the United States Code (5 USC Sections 551(4), 551(5), and 553) as well as Section 1.41 of the Commission's rules and regulations (47 CFR Section 1.41), respectfully moves the Commission's summary decision by way of an Order setting aside, vacating, or correcting its Order granting ReconRobotics, Inc., a 'waiver' from Part 90 of the Commission's rules, construing same to be a Petition for Rulemaking, and reinstating the proceeding as one for rulemaking. As good cause therefor, movant states...

[1] **A prima facie case has been established**, that:

(a) The Commission committed a clear and unmistakable error in granting ReconRobotics, Inc., a 'waiver' in its February 2010 Order in that same could not be effectuated without rulemaking proceedings to modify the Table of Allotments (47 CFR 2.106), which in any event cannot readily be waived as the ITU Radio Rules and Regulations underlying it are subject to Senate ratification (and a waiver thereof effectively usurps that authority and constitutes an ultra vires act).

(b) The Commission acted arbitrarily and capriciously in failing to consider on the record how to construe the ReconRobotics, Inc. 'waiver' request, despite ample evidence therein it was misleadingly denominated as a 'waiver' request when it was – for all practice purposes - a rulemaking

petition; mistakenly allowing the so-called 'waiver' request to proceed as such when it should rightly have been construed and redesignated as a Petition for Rulemaking; and acting upon same as a 'waiver' request rather than properly as a Petition for Rulemaking. In ARRL's Reply to ReconRobotics' Opposition to ARRL's Petition for Reconsideration, the ARRL correctly points out that the Commission had at least constructive notice that it should have construed ReconRobotics' 'waiver' request as a Petition for Rulemaking in that the proceedings leading up to the 'waiver' Order bore a striking resemblance to those of a rulemaking proceeding.

...And, in that:

(c) An affidavit with sufficient factual evidence has been submitted supporting the Motion to Set Aside; Suggestions in support of the Motion to Set Aside, while admittedly using illustrative rather than legally-controlling cases, are nevertheless instructive in support of movant's Motion to Set Aside; and the factual supplement embodied by the Technical Parameters of Radio Station N0ECN have all been submitted in support of the Motion to Set Aside. ReconRobotics, Inc., through its counsel, Mr. Mitchell Lazarus, has filed responsive pleadings to the Motion to Set Aside of movant which can fairly be summarized as *ad hominem* bluster lacking in technical validity or regulatory accuracy and, frankly, off point from the substance of those pleadings ReconRobotics, Inc., was attempting to address. To be clear, **ReconRobotics, Inc.**, in its Opposition to the Motion to Set Aside **actually proved the whole of movant's argument**, regardless of any ex parte remarks in follow up thereto. By way of estoppel, ReconRobotics, Inc. cannot gainsay its own admission, even if inadvertent.

[2] Commission rules and regulations at Section 1.113(a) [47 CFR 1.113(a)] clearly allow a Motion to Set Aside when it suggests the Commission may only do so **on its own motion** within 30 days after the decision against which the motion lies. However, this Motion to Set Aside filed by this movant avoids the limitation of time by being from a private party rather than being on the

Commission's own motion. Moreover, if the Commission didn't want parties to file Motions to Set Aside, clearly a rule prohibiting a private party from doing so would have by now been adopted and it has not been.

The Motion to Set Aside does not enlarge any issue or introduce evidence not available to the Commission at the time of its original 'waiver' Order; it is distinctive in that it would preclude a timely-filed Petition for Reconsideration as a grant of this Motion to Set Aside renders the Petition for Reconsideration void/moot for prematurity due to proceedings being reinstated as for rulemaking; and is distinct and separate from a Petition for Reconsideration in that the relief sought could not be sought by Petition for Reconsideration: that the 'waiver' Order is vitiated ab initio, the 'waiver' request is construed and redesignated a Petition for Rulemaking, and proceedings reinstated, nunc pro tunc, as for a rulemaking proceeding-thus striking all irrelevant interlocutory matters- such a thing cannot reasonably be accomplished by Petition for Reconsideration by whatever species alluded to by opposing counsel.

[3] Candidly, movant believes a grant of the Motion to Set Aside will be administratively precedent-setting for the Commission; however, in this instance doing so avoids a grave injustice and mutual damage between important complimentary and complementary radio services which are essential to the public safety. **That the movant is taking a novel approach** to preventing the aforesaid irreparable harm from coming to the Public Safety, Amateur Radio, and Amateur Satellite Services **is not sufficient cause for denial** of the Motion to Set Aside; after all, some of the space-borne stations with which ReconRobotics' devices might interfere include the International Space Station's ARISS transceivers, Naval Academy satellites, and many of our allies' satellites. That radio station N0ECN enjoys the use of such space-borne stations and other weak-signal propagation techniques for communication only give this movant standing to assert his motion(s).

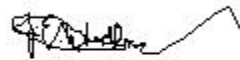
[4] Movant has submitted not just the preponderance of the evidence in favor of the Motion

to Set Aside being granted, but given its opponents' admissions tending to favor its approval, has presented the Commission a clear and convincing degree of proof for its grant. ReconRobotics has presented zero evidence against the substance of the Motion to Set Aside apart from bare argumentation which the Commission's own rules and regulations belie, and all opposition is readily disposed summarily by rejection of same.

[5] No reason at this time exists for the Commission to delay its decision, and further delay only serves to enlarge the damage the movant's Motion to Set Aside seeks to prevent. The foregoing considered, grant of this Motion for Summary Decision as well as the underlying Motion to Set Aside is in the public interest, convenience, and necessity. Accordingly, movant is entitled to grant of this motion and the Motion to Set Aside.

WHEREFORE, movant prays the Commission's summary Order consistent herewith setting aside and vacating its 'waiver' order, construing the application therefor as correctly a petition for rulemaking, and reinstating proceedings consistent with the Commission's established procedures governing petitions for rulemaking (47 CFR Section 1.411), and for such other and further relief as shall be consistent herewith.

Respectfully submitted:



James E. Whedbee, M.Ed.
SBE #26971

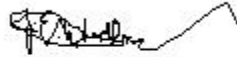
September 4, 2010

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Movant

CERTIFICATE OF SERVICE

THIS CERTIFIES that on this 4th day of September, 2010, an exact copy of the within and foregoing motion was e-mailed to parties whose names, addresses, and e-mail addresses follow this certification.

Signed:



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